

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

ALEK SCHOTT,

Plaintiff,

V.

JOEL BABB, IN HIS INDIVIDUAL AND OFFICIAL
CAPACITY; MARTIN A. MOLINA III, IN
HIS INDIVIDUAL AND OFFICIAL CAPACITY;
JAVIER SALAZAR, IN HIS INDIVIDUAL
AND OFFICIAL CAPACITY; AND
BEXAR COUNTY, TEXAS,

Defendants.

[illegible]

Civil Action No.: 5:23-cv-706-OLG-RBF

DEFENDANT BEXAR COUNTY, ET AL'S RESPONSE IN OPPOSITION
TO PLAINTIFF'S MOTION TO COMPEL

TO THE HONORABLE UNITED STATES MAGISTRATE JUDGE RICHARD B. FARRER:

Defendants **BEXAR COUNTY, ET AL** Defendants in the above entitled and numbered cause and files this their response in opposition to Plaintiff's Motion to Compel and would respectfully show unto the Court the following:

I.

BACKGROUND

The case at bar concerns a traffic stop which occurred on March 16, 2022 wherein Bexar County Deputy Joel Babb witnessed a traffic violation on Plaintiff Schott's vehicle which led to the traffic stop in question. Based on the conversation between Deputy Babb and Plaintiff Schott Deputy Babb called for a K-9 Unit. Defendant Deputy Molina with K-9 Deputy Maximus circled the Schott vehicle and K-9 Maximus spotted. This lead to a search of Schott's vehicle which did not reveal any contraband. This entire encounter lasted one hour and 16 minutes and Plaintiff Schott was released and left the scene. The entire length of time for the transaction was one hour

and 16 minutes which included 20 minutes of waiting for the K-9 Unit to arrive. This is the extent of the entire transaction.

II.

Defendants Bexar County, et al assert that this case is a classic “*proportionality to discovery case*” under Rule 26(b)(1) which the 2015 Amendments to Rule 26 were formulated to prevent. The case at bar concerns a one hour and 16 minute traffic stop of Plaintiff Schott. Deputy Babb conducted the initial stop and was subsequently assisted by Deputy Molina who was K-9 handler who handled the dog Maximus who alerted to the Schott vehicle. Plaintiff has brought suit against Deputy Babb for the initial stop, Deputy Molina the K-9 handler, Sheriff Salazar and Bexar County concerning the one hour 16 minute vehicular stop. The document production in this case has been voluminous and greatly exceeds the proportionality of this case.

Under Rule 26(b)(1), discoverable matters must be both “relevant” and “proportional” to the needs of the case – which are related but distinct requirements. *Samsung Electronics AM, Inc. v. Yang Kun Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Under Rule 26(b)(1), parties may obtain discovery regarding any non-privileged matter that is relevant to any parties claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties relative access to relevant information, the parties resources, the importance of the discovery in resolving the issues and whether the burden or expense of the proposed discovery outweighs its likely benefit. *Booth v. City of Dallas*, 312 F.R.D. 427, 433 (N.D. 2015).

Defendants asserts for this vehicular stop which lasted One hour and 16 minutes which concluded in Plaintiff Schott being released and going about his business, Defendants Bexar County et al have produced 475 body cam and dash cam videos totaling 294.72 GB of video data.

This list is not only inclusive of the incident in question, but other incidents concerning Babb and Molina that were requested by the Plaintiff. These videos include collateral stops by both Deputies Babb and Molina concerning dash cam video and body worn camera video in other stops unrelated to the incident in question but which were requested by the Plaintiff in Plaintiff's First Request for Production (propounded September 1, 2023) and Plaintiff's Second Request for Production (December 13, 2023). In total, Defendants have produced Bates Numbered Documents which amount in excess of 7000 pages of documents including but not limited to Bexar County Policies and Procedures, 201 files of Deputies Babb, Molina, Gamboa, Gereb and Rodriguez, as well as K-9 files on the Canine Maximus.

Defendants' lead counsel took over the case on January 9, 2024 and takes exception to Plaintiff's counsels vituperative comments against defense counsel in this case. Plaintiff's counsels transparent attempt at criticizing defense counsel both in the district attorney's office and current lead counsel was a foreshadowing of Plaintiff's goal at filing a motion to compel.

III.

Defendants Bexar County, et al respond to Plaintiff's areas of concern in the motion to compel as follows:

A. RECORDS REGARDING THE TRAFFIC STOP OF ALEK SCHOTT:

Defendants produced the following:

- March 16, 2022 Schott traffic warning citation (BC 000172);
- March 16, 2022 Spears Incident Summary Reports by Deputy Babb and Molina (BC 000164-BC 000168);
- March 16, 2022 Incident Detail Report (BC 000161-BC 000163);

- March 16, 2022 Body worn Camera Videos of Deputy Babb and Molina concerning the traffic stop in question; (BC 000502 and BC 000442); (BC 000671);
- Plaintiff Schott's telephone (Line) Complaint Internal Affairs taken by Sgt Marta Rodriguez including case closed report, citizen contact sheet, emails between plaintiff and Sgt. Rodriguez and intake handwritten notes (BC 002162-BC 002169);
- Initial Pending Formal Administrative Schott Complaint concerning Deputy Chief Maria Garza to Deputy Chief Deputy James Serrato. (BC 002159-BC 002161). This formal investigation is **pending** and no further documents are available at this time.

B. DEPUTY BABB'S TRAFFIC STOP PRACTICES AND RECORDS:

Defendants produced the following:

- Deputy Babb's Spears Incident Summary Reports regarding **unrelated traffic stops** requested by the Plaintiff. (BC 002497-BC 002553);
- Deputy Babb's training records (BC 000685-BC 001399);
- Deputy Babb's Body worn Camera Videos and Dashcam Videos regarding **unrelated traffic stops** requested by Plaintiff. (BC 000173-BC 000542).

C. DEPUTY MOLINA'S CANINE PRACTICES AND RECORDS:

Defendants produced as follows:

- Deputy Molina's training records (BC 000864-BC 000933); (BC 001399-BC 001464);
- Canine Unit Policies (BC 002240-BC 002570);
- Deputy Molina's Spears Incident Summary Reports (194 reports) from 1-3-22 to 4-29-22;
- Deputy Molina's Bodyworn Camera Videos and Dashcam Videos of **unrelated traffic stops** requested by the Plaintiff. (BC 000542-BC 000684)

D. MAXIMUS CANINE TRAINING PERFORMANCE AND TESTING RECORDS:

Defendants produced the following regarding Canine Maximus:

- Maximus Canine Veterinarian Records (BC 002226-BC 002239);
- September 8, 2023 Memo from Captain Muldau with explanation that Bexar County office does not have Maximus Full Armor training records prepared by Full Armor prior to canine Maximus coming to Bexar County (BC 001465);
- Maximus canine training detail reports from September 25, 2018 to December 16, 2020 (BC 001466-BC 001938);
- Maximus Canine Training Detail Reports from January 13, 2021 to July 18, 2023 (BC 001939-BC 002098);
- Bexar County canine unit standard operating procedures (BC 002240-BC 002249)

E. BEXAR COUNTY TRAFFIC STOP PRACTICES AND DATA:

Defendants produced the following:

- Bexar County Sheriff's Office Chapter 43 Pursuits and Stop Techniques Policies and Procedures (BC 002250-BC 002256);
- Bexar County Sheriff's Office Chapter 34 Prohibition of Racial Profiling Policies and Procedures (BC 002285-BC 002286);
- Sheriff's Directive 23-01 regarding Chapter 23 Crash Investigation and Traffic Enforcement (BC 002287);
- Bexar County Sheriff's Office Chapter 16 Warrantless Search and Seizure Policies and Procedures (BC 002255-BC 002257);
- Bexar County Sheriff's Office Chapter 23 Crash Investigation and Traffic Enforcement Policies and Procedures (BC 002271-BC 002284);
- Bexar County Sheriff's Office Traffic Training Lesson Plans (BC 001117-BC 001280);
- Bexar County Sheriff's Office Traffic Accident Investigation Training Plan (BC 001281-BC 001298);

- Bexar County Sheriff's Office Traffic Stops Training Academy Plan (BC 001299-BC 001393);
- Bexar County Sheriff's Office Traffic Lesson Plan (BC 001374-BC 001393);
- Public Agency Training Council Motor Vehicle Stops Lesson Plan (BC 001394);
- Law, Public Safety, Corrections and Security Basic Traffic Stops Lesson Plan (BC 000934-BC 000935);
- TCOLE Intermediate Search and Seizure Lesson Plan (BC 000946);
- Bexar County Sheriff's Office Patrol Orientation Lesson Plan (BC 000947-BC 000966);
- Bexar County Sheriff's Office Canine Familiarization Lesson Plan (BC 000967-BC 000972);
- Bexar County Sheriff's Office Misdemeanor and Felony Traffic Stops Lesson Plan (BC 000973-BC 000980);
- Bexar County Sheriff's Office Strategies and Tactics of Patrol Stops Lesson Plan (BC 000981-BC 001116);
- Traffic Stop Excell Spreadsheet Data from January 1, 2022 to the present (BC 002307);
- Bexar County Sheriff's Office Spears incident summary reports regarding unrelated traffic stops by Deputy Babb and Deputy Molina (BC 002497-BC 002553).

F. COMPLAINTS ABOUT TRAFFIC STOPS AND VEHICLE SEARCHES:

Defendants produced the following:

- Bexar County Sheriff's Office Internal Affairs Complaints and Disciplinary Actions against Deputy Joel Babb (BC 002131-BC 002160);
- Bexar County Sheriff's Office Internal Affairs Complaints and Disciplinary Actions against Deputy Martin Molina (BC 002178-BC 002187); (BC 002221-BC 002225).

IV.

Defendants Bexar County, et al assert that they have responded in good faith to Plaintiff's requests which are vastly disproportionate to the needs of this case. Plaintiff Schott was subjected to a traffic stop for One Hour and Sixteen Minutes and was released. The proportionality in this case has already vastly exceeded the needs of this case, considering the importance of the issues at stake in the action and the amount in controversy. Defendants assert that a similar case to the one at bar is *Hinson v. Arbuckle*, 2023 WL 1495402 (W.D. La. Jan. 17, 2023). In *Hinson*, the Court discussed discovery issues concerning a K-9 who bit the plaintiff. The Court, in granting in part and denying in part the motion to compel limited discovery to only the relevant factors in the case. For instance, "*the undersigned finds that the entire DPSO Policy Manual or set of policies is not discoverable, nor is Hinson entitled to discovery of additional policies of internal investigations and disciplinary process on document retention and reporting.*" *Id.* *9. Defendant Bexar County, et al asserts that all relevant policies have been provided to the Plaintiff herein. Defendant further states on the record that there are no interdiction Memorandum Of Understanding (MOU's) as alleged in Plaintiff's Motion. Defendants assert that they have complied in good faith with the discovery requirements of this case and move the Court to deny Plaintiff's Motion to Compel since Defendants have complied with the discovery requests as enumerated in this response. (*See, Exhibit A – Defendants' Bates Log for Discovery Responses*).

WHEREFORE, PREMISES CONSIDERED, Defendants pray that the Plaintiff's Motion to Compel be in all things denied and for such other and further relief as it may show itself justly entitled.

Respectfully submitted,

LAW OFFICES OF CHARLES S. FRIGERIO
A Professional Corporation
Riverview Towers
111 Soledad, Suite 465
San Antonio, Texas 78205
(210) 271-7877

BY: /s/ Charles S. Frigerio
CHARLES S. FRIGERIO
SBN: 07477500
HECTOR X. SAENZ
SBN: 17514850

ROBERT W. PIATT III
Bar No. 24041692
SUSAN A. BOWEN
Bar No. 02725950
Bexar County District Attorney's Office
Civil Division
101 W. Nueva, 7th Floor
San Antonio, Texas 78205
Phone: (210) 335-0785
Fax: (210) 335-2773
robert.piatt@bexar.org
sbowen@bexar.org

ATTORNEYS FOR BEXAR COUNTY, TEXAS,
JOEL BABB and MARTIN A. MOLINA III

CERTIFICATE OF SERVICE

I hereby certify that on the 15TH day of March, 2024, I electronically filed the foregoing Defendants' Response in Opposition to Plaintiff's Motion to Compel via electronic mail to the following:

Christen Mason Hebert
INSTITUTE FOR JUSTICE
816 Congress Ave., Suite 960
Austin, TX 78701

Email: chebert@ij.org

Joshua Windham*
Trace E. Mitchell*
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Suite 900
Arlington, VA 22203
Attorneys for Plaintiff

Email: jwindham@ij.org
Email: tmitchell@ij.org

/s/ Charles S. Frigerio
CHARLES S. FRIGERIO